

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
TRENTON DIVISION**

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
Caption in Compliance with N.J.N. JBR 9004-2(c) Ronald Gellert (No. 019321997) Gellert Scali Busenkell & Brown, LLC 1201 North Orange Street Suite 300 Wilmington, DE 19801 Phone: (302) 425-5800 Fax: 302-425-5814 Email: <a href="mailto:rgellert@gsbblaw.com">rgellert@gsbblaw.com</a>	
<i>Counsel to Discover Bank</i>	
In re:  Renee M. Luchtman,  Debtor.	Chapter 13  Case no. 19-22614-MBK
Discover Bank,  Plaintiff,  v.  Renee M. Luchtman,  Defendant.	Adversary Case No.

**COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF DEBT**

Now comes Discover Bank, by and through its attorney, Ronald Gellert, Esq., of Gellert Scali Busenkell & Brown, LLC, and states as follows:

**Jurisdiction and Venue**

1 Defendant Renee M. Luchtman is a debtor in the voluntary Chapter 13 bankruptcy petition filed in this Court on June 26, 2019.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 151, and 157.

3. Venue in this Court is proper pursuant to 28 U.S.C. § 1408.
4. This matter is a Core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

**Facts Common to all Counts**

5. Plaintiff Discover Bank, issuer of the Discover credit card, offers revolving credit card accounts to individuals.
6. Defendant is an individual consumer and the holder of a credit card account with Plaintiff, account number ending in -5332.
7. Consumer customers agree to make monthly installment payments for purchases and cash advances plus pay applicable interest and fees under the credit card accounts.
8. There is currently due and owing on Defendant's account the amount of \$17,664.00.
9. The Defendant incurred the following charges and Plaintiff financed said charges through the above-mentioned revolving credit card account between March 28, 2019 and June 26, 2019, before filing the bankruptcy petition. A summary of the transaction history is set forth below, and copies of the relevant account statements are attached hereto as **Exhibit "A"**.

Account Number	Date	Description	Amount
XXXX-XXXX-XXXX-5332	05-31	PHONE PAYMENT - THANK YOU	-361.00
XXXX-XXXX-XXXX-5332	04-15	BALANCE TRANSFER CHECK 0972 USA	17,500.00
XXXX-XXXX-XXXX-5332	04-15	BAL TRANS FEE	525.00

10. On or about April 13, 2019, Defendant wrote a Discover balance transfer check to herself, in the amount of \$17,500.00, and deposited the funds into an account in her name at PNC Bank.

Renee M. Luchtman  
617 Stokes Rd., Ste. 4124  
Medford, NJ 08055-3097  
Account ending in 5332

This check must post by 04/30/19  
to get your promotional APR. See  
promotional offer for details. Checks void  
for all purposes after 09/30/19.

Use by: 04/30/19  
0972  
62-64  
311

DATE 4/13/19

PAY TO THE ORDER OF Renee M. Luchtman \$ 17,500.00  
seventeen thousand five hundred <sup>00</sup>/<sub>100</sub> DOLLARS

DISCOVER®  
1 800-347-2683

MEMO deposit only Renee Luchtman

1: [REDACTED] 210972

20190415 004700650336 060002820

DO NOT WRITE IN THESE SPACES  
EXPERIMENTAL INSTITUTION USE

ENDORSE HERE  
deposit only

**Count 1: Fraud, 11 U.S. Code § 523(a)(2)(A)**

11. Plaintiff hereby incorporates and reasserts Paragraphs 1-10 as if fully stated herein.
12. Pursuant to 11 U.S.C. § 523(a)(2)(A), money, property, services, or an extension, renewal, or refinancing of credit are nondischargeable to the extent that they are obtained by false pretenses, a false representation, or actual fraud.
13. Defendant obtained money, property, and/or services through an extension of credit advanced by the Plaintiff on the open-ended credit agreement.
14. Defendant knowingly sought and obtained financing from Plaintiff with no intention to

pay off the full balance of charges incurred.

15. Defendant incurred the charges in anticipation of filing this bankruptcy.

16. Defendant knew, or should have known, at the time of the transactions that she could not afford to repay Plaintiff, and in fact, could not afford to repay Plaintiff.

17. Defendant, as such, falsely represented ability and intent to repay Plaintiff, and Plaintiff reasonably relied upon such representations to its detriment.

18. The money, property, and/or services obtained by Defendant through the open-ended credit agreement and the credit advanced by the Plaintiff on the Account were obtained by Defendant's false representations, false pretenses, or actual fraud.

19. Plaintiff has been damaged by the Defendant's fraudulent conduct in the form of an unpaid balance due and owing on the account.

20. As such, Defendant's debt to Plaintiff is non-dischargeable pursuant to 11 U.S.C. 523(a)(2)(A).

**Count 2: Presumption of Nondischargeability**  
**For Federal Tax Debt Payment**  
**11 U.S. Code 523(a)(14)**

21. Plaintiff hereby incorporates and reasserts Paragraphs 1-20 as if fully stated herein.

22. Pursuant to 11 U.S.C. 523(a)(14), debts incurred to pay a tax to the United States that would be nondischargeable under paragraph 523(a)(1) are likewise presumed to be nondischargeable.

23. Pursuant to 11 U.S.C. 523(a)(1), a tax debt owed to the United States is nondischargeable if the return was filed or given after the date on which such return, report, or notice was last due, under any applicable law or extension, and after two years before the date of the filing of the petition.

24. On September 4, 2019, Defendant filed a Certification Regarding Large Transactions in the underlying Chapter 13 case, number 19-22614, which stated that Defendant used the funds obtained from Discover Bank “for the purposes of paying towards the amount owed to the IRS for my 2018 Federal income Tax Return.” (See, Doc. 21, Case No. 19-22614.)
25. On September 5, 2019, Defendant filed an Amended Certification Regarding Large Transactions, which stated that Defendant used the funds obtained from Discover Bank, along with additional funds from her savings account, “to pay towards the amounts owed to the IRS and State of New Jersey for my Federal and Local income tax.” (See, Doc. 22, Case No. 19-22614.)
26. Neither Certification specifies the date on which the tax return was filed.
27. Upon information and belief, Defendant’s payment to the IRS was for Federal taxes which were then past due at the time the return was filed, and would have been nondischargeable under 523(a)(1), but for the Defendant’s use of Discover’s funds to make such payment.
28. Accordingly, the Federal tax payment is nondischargeable pursuant to 11 U.S.C. 523(a)(14).

### **Count 3: Money Judgment**

29. Plaintiff hereby incorporates and reasserts Paragraph 1-28 as if fully stated herein.
30. The total of the charges presumed to be nondischargeable is \$17,500.00.
31. Upon a finding that the debt is nondischargeable, Plaintiff is entitled to a money judgment.

**WHEREFORE**, Discover Bank prays for the entry of an order as follows:

- i. For an order declaring that the debt owed to Plaintiff by Defendant as set forth in the Complaint is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A); and

ii. For an order declaring that the debt owed to Plaintiff by Defendant as set forth in the Complaint is non-dischargeable pursuant to 11 U.S.C. § 523(a)(14); and

iii. For a judgment in favor of Plaintiff and against Defendant in the principal amount of \$17,500.00; and

iv. For such other and further relief as this Court deems just.

Respectfully submitted:

Dated: September 24, 2019

GELLERT SCALI BUSENKELL & BROWN LLC

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